

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ADDISON ASC, LLC dba ADDISON SURGERY CENTER, } CASE NO. 2:23-cv-03603-SVW-KS

**Plaintiff, } AMENDED STIPULATED  
PROTECTIVE ORDER**

VS.

AETNA HEALTH OF CALIFORNIA  
INC.; AETNA LIFE INSURANCE  
COMPANY; and DOES 1 through 20,  
inclusive. } (Complaint filed in Los Angeles  
Superior Court Case No.  
23SMCV01057)

### Defendants.

} CASE NO. 2:23-cv-03603-SVW-  
} KS

{ **AMENDED STIPULATED  
PROTECTIVE ORDER**

} (Complaint filed in Los Angeles  
Superior Court Case No.  
23SMCV01057)

} Complaint Filed: March 14, 2023

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Amended Stipulated Protective Order filed on June 22, 2023, the terms of the Amended Stipulated Protective Order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been modified by the Court's amendment of paragraph 1 of the Amended Stipulated Protective Order (shown in bold face type).

1                   **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND MODIFIED**  
2                   **BY THE COURT<sup>1</sup>**  
3  
4

5                   **PURPOSES AND LIMITATIONS:**

6                   Discovery in this action is likely to involve production of confidential,  
7 proprietary, or private information for which special protection from public  
8 disclosure and from use for any purpose other than prosecuting this litigation may  
9 be warranted.<sup>1</sup> Accordingly, the parties hereby stipulate to and petition the Court  
10 to enter the following Stipulated Protective Order. The parties acknowledge that  
11 this Order does not confer blanket protections on all disclosures or responses to  
12 discovery and that the protection it affords from public disclosure and use extends  
13 only to the limited information or items that are entitled to confidential treatment  
14 under the applicable legal principles. The parties further acknowledge that the  
15 protections to be afforded by the protective order are limited to discovery in this  
16 action. The parties further acknowledge, that this Stipulated Protective Order does  
17 not entitle them to file confidential information under seal; Civil Local Rule 79-5  
18 sets forth the procedures that must be followed and the standards that will be  
19 applied when a party seeks permission from the court to file material under seal.

20                   **GOOD CAUSE STATEMENT:**

21                   This case will involve disclosure and exchange of details regarding medical  
22 treatment and health information related to services provided by Plaintiff, which is  
23 protected and confidential, pursuant to the Health Insurance Portability and  
24 Accountability Act of 1996. A qualified protective order is necessary to ensure  
25 confidentiality and safeguard the privacy of Plaintiff's patients. If entered, the

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26                   <sup>1</sup> The Court's additions to the agreed terms of the Stipulation are indicated in bold typeface.

27                   <sup>1</sup> The parties do not follow the model protective order as this protective order is narrowly tailored  
28 to the types of confidential information that will be exchanged in this ERISA health benefits case  
as subject to Health Insurance Portability and Accountability Act of 1996.

1 protective order will govern the handling of documents and any other information  
2 or material produced, given, or exchanged by the parties and any non-parties since  
3 the inception of this matter.

4 Accordingly, to expedite the flow of information, to facilitate the prompt  
5 resolution of disputes over confidentiality of discovery materials, to adequately  
6 protect information the parties are entitled to keep confidential, to ensure that the  
7 parties are permitted reasonable necessary uses of such material in preparation for  
8 and in the conduct of trial, to address their handling at the end of the litigation, and  
9 serve the ends of justice, a protective order for such information is justified in this  
10 matter. It is the intent of the parties that information will not be designated as  
11 confidential for tactical reasons and that nothing be so designated without a good  
12 faith belief that it has been maintained in a confidential, non-public manner, and  
13 there is good cause why it should not be part of the public record of this case.

14

### 1. Scope of Protection

15 This Protective Order shall govern any record of information produced in  
16 this action and designated pursuant to this Protective Order, including all  
17 designated deposition testimony, all designated testimony taken at a hearing or  
18 other proceeding, all designated deposition exhibits, interrogatory answers,  
19 admissions, documents and other discovery materials, whether produced  
20 informally or in response to interrogatories, requests for admissions, requests for  
21 production of documents or other formal methods of discovery.

22 This Protective Order shall also govern any designated record of information  
23 produced in this action pursuant to required disclosures under any federal  
24 procedural rule or local rule of the Court and any supplementary disclosures  
25 thereto. **Any use of Confidential Information at trial shall be governed by the  
26 orders of the trial judge. This Order does not govern the use of Confidential  
27 Information at trial.**

1        This Protective Order shall apply to the parties and to any nonparty from  
2 whom discovery may be sought who desires the protection of this Protective Order.

3            **2. Definitions**

4        The term Confidential Information shall mean confidential or proprietary  
5 technical, scientific, financial, business, health, or medical information designated  
6 as “CONFIDENTIAL” by the producing party.

7        The term Confidential Health Information shall constitute a subset of  
8 Confidential Information, and shall be designated as “CONFIDENTIAL” and  
9 subject to all other terms and conditions governing the treatment of Confidential  
10 Information. Confidential Health Information shall mean information supplied in  
11 any form, or any portion thereof, that identifies an individual or subscriber in any  
12 manner and relates to the past, present, or future care, services, or supplies relating  
13 to the physical or mental health or condition of such individual or subscriber, the  
14 provision of health care to such individual or subscriber, or the past, present, or  
15 future payment for the provision of health care to such individual or subscriber.  
16 Confidential Health Information shall include, but is not limited to, claim data,  
17 claim forms, grievances, appeals, or other documents or records that contain any  
18 patient health information required to be kept confidential under any state or  
19 federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the  
20 Health Insurance Portability and Accountability Act of 1996 (see 45 C.F.R. §§  
21 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

22            a. names;

23            b. all geographic subdivisions smaller than a State, including street  
24 address, city, county, precinct, and zip code;

25            c. all elements of dates (except year) for dates directly related to an  
26 individual, including birth date, admission date, discharge date, age, and date of  
27 death;

28            d. telephone numbers;

- 1       e.     fax numbers;
- 2       f.     electronic mail addresses;
- 3       g.     social security numbers;
- 4       h.     medical record numbers;
- 5       i.     health plan beneficiary numbers;
- 6       j.     account numbers;
- 7       k.     certificate/license numbers;
- 8       l.     vehicle identifiers and serial numbers, including license plate  
numbers;
- 9       m.    device identifiers and serial numbers;
- 10      n.    web universal resource locators (“URLs”);
- 11      o.    internet protocol (“IP”) address numbers;
- 12      p.    biometric identifiers, including finger and voice prints;
- 13      q.    full face photographic images and any comparable images; and/or
- 14      r.    any other unique identifying number, characteristic, or code.

16           The term Technical Advisor shall refer to any person who is not a party to  
17          this action or not presently employed by the receiving party or a company affiliated  
18          through common ownership, who has been designated by the receiving party to  
19          receive another party’s Confidential Information, including Confidential Health  
20          Information. Each party’s Technical Advisors shall be limited to such person as, in  
21          the judgment of that party’s counsel, are reasonably necessary for development and  
22          presentation of that party’s case. These persons include outside experts or  
23          consultants retained to provide technical or other expert services such as expert  
24          testimony or otherwise assist in trial preparation.

25           **3. Designation of Information**

26           Documents and things produced or furnished during the course of this action  
27          shall be designated as containing Confidential Information, including Confidential  
28          Health Information, by placing on each page, each document (whether in paper or

1 electronic form), or each thing a legend substantially as follows:

2 CONFIDENTIAL

3 A party may designate information disclosed at a deposition as Confidential  
4 Information by requesting the reporter to so designate the transcript at the time of  
5 the deposition.

6 A producing party shall designate its discovery responses, responses to  
7 requests for admission, briefs, memoranda and all other papers sent to the court or  
8 to opposing counsel as containing Confidential Information when such papers are  
9 served or sent.

10 A party shall designate information disclosed at a hearing or trial as  
11 Confidential Information by requesting the court, at the time the information is  
12 proffered or adduced, to receive the information only in the presence of those  
13 persons designated to receive such information and court personnel, and to  
14 designate the transcript appropriately.

15 The parties will use reasonable care to avoid designating any documents or  
16 information as Confidential Information that is not entitled to such designation or  
17 which is generally available to the public. The parties shall designate only that part  
18 of a document or deposition that is Confidential Information, rather than the entire  
19 document or deposition.

20 **4. Disclosure and Use of Confidential Information**

21 Information that has been designated Confidential shall be disclosed by the  
22 receiving party only to Qualified Recipients. All Qualified Recipients shall hold  
23 such information received from the disclosing party in confidence, shall use the  
24 information only for purposes of this action and for no other action, and shall not  
25 use it for any business or other commercial purpose, and shall not use it for filing  
26 or prosecuting any patent application (of any type) or patent reissue or  
27 reexamination request, and shall not disclose it to any person, except as hereinafter  
28 provided. All information that has been designated Confidential shall be carefully

1 maintained so as to preclude access by persons who are not qualified to receive  
2 such information under the terms of this Order.

3 In the event that any receiving party's briefs, memoranda, discovery  
4 requests, requests for admission or other papers of any kind which are served or  
5 filed shall include another party's Confidential Information, the papers shall be  
6 appropriately designated and shall be treated accordingly.

7 All documents, including attorney notes and abstracts, which contain another  
8 party's Confidential Information, shall be handled as if they were designated  
9 pursuant to paragraph 3.

10 Documents, papers and transcripts filed with the court that contain any other  
11 party's Confidential Information shall be filed under seal.

12 **5. Qualified Recipients**

13 For purposes of this Order, the term Qualified Recipient means

14 a. Outside counsel of record for any party in this action, as well as  
15 employees of such counsel (excluding experts and investigators) assigned to and  
16 necessary to assist such counsel in the preparation and trial of this action;

17 b. Representatives, officers, or employees of a party as necessary to  
18 assist outside counsel in the preparation and trial of this action;

19 c. Witnesses who testify by deposition or at trial who, if not a  
20 representative, officer, or employee of a party, shall be advised about the terms of  
21 this Order and that such Order is applicable to them in connection with their  
22 testimony and do not retain copies of Confidential Information;

23 d. Persons who were authors or recipients of the Confidential  
24 Information or previously had legal access to Confidential Information;

25 e. Technical Advisors, expert witnesses, or consultants engaged by a  
26 party to assist with the preparation and trial of this action provided such expert or  
27 consultant agrees in writing, in the form attached at Appendix A, to be bound by  
28 the terms of this Order;

1           f. Any designated arbitrator or mediator who is assigned to hear this  
2 matter, or who has been selected by the parties, and his or her staff, provided that  
3 such individuals agree in writing, in the form attached at Appendix A, to be bound  
4 by the terms of this Order;

5           g. Stenographers and videographers engaged to transcribe or record  
6 depositions conducted in this action provided that such individuals agree in  
7 writing, in the form attached at Appendix A, to be bound by the terms of this  
8 Order; and

9           h. The Court and its support personnel.

10          **6. Nonparties**

11         Any nonparty who produces documents or other information in response to  
12 discovery requests or subpoenas in this litigation shall be entitled to the benefits  
13 and protections of this Order and shall be entitled to seek additional protections.

14         The parties agree that they will treat Confidential Information produced by  
15 nonparties according to the terms of this Order.

16         Nonparties may challenge the confidentiality of Confidential Information by  
17 filing a motion to intervene and a motion to de-designate.

18          **7. Inadvertent Failure to Designate**

19         In the event that a producing party inadvertently fails to designate any of its  
20 information pursuant to paragraph 3, it may later designate by notifying the  
21 receiving parties in writing. The receiving parties shall take reasonable steps to see  
22 that the information is thereafter treated in accordance with the designation.

23         It shall be understood however, that no person or party shall incur any  
24 liability hereunder with respect to disclosure that occurred prior to receipt of  
25 written notice of a belated designation.

26          **8. Inadvertent Disclosure**

27         In the event of an inadvertent disclosure of another party's Confidential  
28 Information to a non-Qualified Recipient, the party making the inadvertent

1 disclosure shall promptly upon learning of the disclosure: (i) notify the person to  
2 whom the disclosure was made that it contains Confidential Information subject to  
3 this Order; (ii) make all reasonable efforts to preclude dissemination or use of the  
4 Confidential Information by the person to whom disclosure was inadvertently  
5 made including, but not limited to, obtaining all copies of such materials from the  
6 non-Qualified Recipient; and (iii) notify the producing party of the identity of the  
7 person to whom the disclosure was made, the circumstances surrounding the  
8 disclosure, and the steps taken to ensure against the dissemination or use of the  
9 information.

10 **9. Challenge to Designation**

11 At any time after the delivery of Confidential Information, counsel for the  
12 party receiving the Confidential Information may challenge the designation of all  
13 or any portion thereof by providing written notice thereof to counsel for the party  
14 disclosing or producing the Confidential Information. If the parties are unable to  
15 agree as to whether the confidential designation of discovery material is  
16 appropriate, the party receiving the Confidential Information shall certify to the  
17 Court that the parties cannot reach an agreement as to the confidential nature of all  
18 or a portion of the Confidential Information. Thereafter, the party disclosing or  
19 producing the Confidential Information shall have ten days from the date of  
20 certification to file a motion for protective order with regard to any Confidential  
21 Information in dispute. The party producing the Confidential Information shall  
22 have the burden of establishing that the disputed Confidential Information is  
23 entitled to confidential treatment. If the party producing the Confidential  
24 Information does not timely file a motion for protective order, the Confidential  
25 Information in dispute shall no longer be subject to confidential treatment as  
26 provided in this Order. All Confidential Information is entitled to confidential  
27 treatment pursuant to the terms of this Order until and unless the parties formally  
28 agree in writing to the contrary, a party fails to timely move for a protective order,

1 or a contrary determination is made by the Court as to whether all or a portion of  
2 designated Confidential Information is entitled to confidential treatment.

3       **10. Conclusion of Action**

4       At the conclusion of this action, including through all appeals, each party or  
5 other person subject to the terms hereof shall be under an obligation to destroy or  
6 return to the producing party all materials and documents containing Confidential  
7 Information and to certify to the producing party such destruction or return. Such  
8 return or destruction shall not relieve said parties or persons from any of the  
9 continuing obligations imposed upon them by this Order.

10      The provisions of this paragraph shall not be binding on the United States,  
11 any insurance company, or any other party to the extent that such provisions  
12 conflict with applicable Federal or State law. The Department of Justice, any  
13 insurance company, or any other party shall notify the producing party in writing  
14 of any such conflict it identifies in connection with a particular matter so that such  
15 matter can be resolved either by the parties or by the Court.

16      / / /

17       **11. Jurisdiction to Enforce Protective Order**

18      After the termination of this action, the Court will continue to have  
19 jurisdiction to enforce this Order.

20       **12. Modification of Protective Order**

21      This Order is without prejudice to the right of any person or entity to seek a  
22 modification of this Order at any time either through stipulation or Order of the  
23 Court.

24       **13. Confidentiality of Party's Own Documents**

25      Nothing herein shall affect the right of the designating party to disclose to its  
26 officers, directors, employees, attorneys, consultants or experts, or to any other  
27 person, its own information. Such disclosure shall not waive the protections of this  
28 Protective Order and shall not entitle other parties or their attorneys to disclose

1 such information in violation of it, unless by such disclosure of the designating  
2 party the information becomes public knowledge. Similarly, the Protective Order  
3 shall not preclude a party from showing its own information, including its own  
4 information that is filed under seal by a party, to its officers, directors, employees,  
5 attorneys, consultants or experts, or to any other person.

6       **14. Compulsory Disclosure to Third Parties**

7       If any receiving party is subpoenaed in another action or proceeding or  
8 served with a document or testimony demand or a court order, and such subpoena  
9 or demand or court order seeks Confidential Information, including Confidential  
10 Health Information of a producing party, the receiving party shall give prompt  
11 written notice to counsel for the producing party and allow the producing party an  
12 opportunity to oppose such subpoena or demand or court order prior to the  
13 deadline for complying with the subpoena or demand or court order. No  
14 compulsory disclosure to third parties of information or material exchanged under  
15 this Order shall be deemed a waiver of any claim of confidentiality, except as  
16 expressly found by a court or judicial authority of competent jurisdiction.

17       **15. Binding Effect**

18       This Order shall be binding upon the parties and their attorneys, successors,  
19 executors, personal representatives, administrators, heirs, legal representatives,  
20 assigns, subsidiaries, divisions, employees, agents, independent contractors, or  
21 other persons or organizations over which they have control.

22       **16. Filing Protected Material**

23       A Party that seeks to file under seal any Protected Material must comply  
24 with Civil Local Rule 79-5. Protected Material may only be filed under seal  
25 pursuant to a court order authorizing the sealing of the specific Protected Material  
26 at issue. If a Party's request to file Protected Material under seal is denied by the  
27 court, then the Receiving Party may file the information in the public record unless  
28 otherwise instructed by the court.

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3 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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**SIGNATURE CERTIFICATION**

6 Pursuant to Section 2(f)(4) of the Electronic Case Filing Administrative  
7 Policies and Procedures Manual, I hereby certify that the content of this document  
8 is acceptable for Plaintiff's counsel, Alan Nesbit, and that I have obtained his  
9 authorization to affix his electronic signature to this document.

10

11 Dated: June 22, 2023

NESBIT LAW GROUP APC

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By: /s/ Alan Nesbit

Alan Nesbit

Attorneys for Plaintiff  
ADDISON ASC, LLC dba  
ADDISON SURGERY  
CENTER

Dated: June 22, 2023

GORDON REES SCULLY  
MANSUKHANI, LLP

By: /s/ Matthew G. Kleiner

Matthew G. Kleiner

Andrea K. Williams

Attorneys for Defendants  
AETNA HEALTH OF  
CALIFORNIA INC. and  
AETNA LIFE  
INSURANCE COMPANY

1 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.  
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3 Date: June 22, 2023  
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Honorable Karen L. Stevenson  
CHIEF MAGISTRATE JUDGE

1 APPENDIX A  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 ADDISON ASC, LLC dba ADDISON      ) CASE NO. 2:23-cv-03603-SVW-  
12 SURGERY CENTER,                        ) KS  
13    Plaintiff,      ) **APPENDIX A – PROTECTIVE**  
14    vs.                    ) **ORDER UNDERTAKING**  
15 AETNA HEALTH OF CALIFORNIA      )  
16 INC.; AETNA LIFE INSURANCE      ) (Complaint filed in Los Angeles  
17 COMPANY; and DOES 1 through 20,    ) Superior Court Case No.  
18 inclusive,                            ) 23SMCV01057)  
19    Defendants.        ) Complaint Filed: March 14, 2023

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20 I, \_\_\_\_\_, declare that:

21 1. My address is \_\_\_\_\_.

22 My current employer is \_\_\_\_\_.

23 My current occupation is \_\_\_\_\_.

24 2. I have received a copy of the Protective Order in this action. I have  
25 carefully read and understand the provisions of the Protective Order.

26 3. I will comply with all of the provisions of the Protective Order and  
27 agree to be bound by the Protective Order. I will hold in confidence, will not  
28 disclose to anyone not qualified under the Protective Order, and will use only for

purposes of this action any Confidential Information or information designated as “Confidential” that is disclosed to me.

4. Promptly upon termination of the relevant action, I will either return in full to the outside counsel for the party by whom I am employed or completely destroy all documents and things designated as "Confidential" that came into my possession and all documents and things that I have prepared relating thereto.

5. I understand that the obligations of this undertaking and the provisions of the Protective Order continue past the termination of the action.

6. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature \_\_\_\_\_

Date \_\_\_\_\_